by the law of the domicile, the surrogate's decision, although never directly attacked, was not binding, and the estate must be administered in accordance with the will as admitted to probate in Michigan and without reference to the codicil there rejected. *Higgins* v. *Eaton* (C. C. N. D., N. Y. 1911) 188 Fed. 938.

Each State must of right determine the testamentary capacity of its own domiciled residents. WHARTON, CON. OF LAWS, § 84. Nor is one State bound by comity to follow the decisions of another State determining matters in contravention of its own domestic policy. WHARTON, CON. OF LAWS, § 656. *Clarke* v. *Clarke,* 178 U. S. 186. If the New York surrogate's decision were enforced it would have the effect both of determining the competency of the testator domiciled in Michigan and of governing the distribution of his personal estate contrary to the established rule of private international law. STORY, CON. OF LAWS, § 380, *Harrison* v. *Nixon,* 9 Pet. 483. A judgment of one State being only entitled to such faith and credit as it receives by law and custom in its own State, see *Robertson* v. *Pickrell,* 109 U. S. 608; *B'd of Public Works* v. *Columbia College,* 17 Wall. 521, it followed that the Federal Court did not consider itself bound by this decision of the New York surrogate unless complainant, by appearing and contesting the case, was bound by estoppel. Such might have been the conclusion if this had been an action *in personam.* But the decision was a determination of the right of the administration of property and consequently an action *in rem* and so not personally binding upon complainant. *Farrell* v. *O'Brien,* 199 U. S. 89, *Thorman* v. *Frame,* 176 U. S. 350. The reason of this rule is at once apparent when it is considered that estoppel, to be binding, must be mutual. As complainant would be estopped all who would profit thereby would be estopped, and this would include all the other legatees and distributees, regardless of whether they contested the will in New York or not, thus substituting the New York decree for the Michigan decree. BIGELOW, ESTOPPEL, Ed. 5, 113-115; *Goodman* v. *Niblack,* 102 U. S. 556. Therefore the executor was ordered to follow the Michigan rule of distribution, either by paying complainant personally or by transmitting the proceeds of the personalty to Michigan for distribution. *Waterman* v. *Bk. and Trust Co.,* 215 U. S. 33, 30 Sup. Ct. 10; *Wright* v. *Philips,* 56 Ala. 69.

WILLS—VALIDITY—FRAUD.—Under a statute of Pennsylvania, a gift to a charity by will is void if the testator dies within thirty days of the execution of the will. Testatrix gave her residuary estate to a charity, but executed a codicil revoking that gift and giving it to a trust company in case she died within thirty days. Testatrix had no interest in the corporation, and knew none of its stockholders or officers, except the scrivener of the will, an assistant trust officer. He, on his own initiative, drew up the codicil, informed testatrix of the law declaring testamentary gifts to charity void if testator's death ensued within thirty days of the execution of the will, and asked her whom she desired to take the property if that event occurred. *Held,* that this was an apparent effort to avoid the statute, and the knowledge of the trust officer and his participation therein constituted such a constructive fraud as to

avoid the bequest. *In re Stirk's Estate, Appeal of Wood et al.* (Pa. 1911) 81 Atl. 187.

It is obvious that testatrix could have had no desire or intention that the trust company should receive her residuary estate, amounting to a large sum, as an absolute gift, but supposed this was a means of carrying out her charitable purpose. Similar bequests have been avoided by the heirs, see *Jones* v. *Badley,* L. R. 3 Eq. Cas. 634; *Muckleston* v. *Brown,* 6 Ves. 52. Whenever an absolute estate is devised upon a secret trust, any assent to the purpose of the testator is sufficient to impress a trust upon the property. Silent acquiescence has the same effect as a positive promise, for fraud is not tolerated in any form. *Russell* v. *Jackson,* 10 Hare 204 (9 Hare 387). However, a knowledge of the purpose of the gift is essential, for there must exist some assent, express or implied, to enable equity to fasten a trust upon an absolute devise of this character. *Schultz's Appeal,* 80 Pa. St. 396; *Wallgrave* v. *Tebbs,* 2 Kay & J. 313. This may be constructively implied from the knowledge of the agent. Any fraud on his part binds the principal, for a taint in the original transaction "runs through the derivative interest." *Russell* v. *Jackson, supra; Hooker* v. *Axford,* 33 Mich. 453. The trust company was held chargeable with a knowledge which its officer was presumed to possess from his familiarity with testatrix's original purpose and his long experience as trust officer. Speaking of a somewhat similar case, Judge FINCH said: "Any devise or bequest of this character is dangerous and indefensible. It exposes testators to the suggestion of unnecessary difficulties as inducements to the artifice of an absolute devise concealing an illegal trust. It exposes the devisee to temptation and, even when he acts honestly, to severe and unrelenting criticism. It subserves no good or useful purpose. If we sustain it, we admit that any statute may be thus evaded and that equity can not redress the wrong." *In re O'Hara,* 95 N. Y. 403, 422.

WILLS—CONSTRUCTION—PRECATORY WORDS.—Testatrix bequeathed certain of her property "to start and use for a Women's Christian Association * * * the institution to be carried out upon the plan of the Women's Christian Association of Philadelphia," and stated that she "would like the executive committee to consist of" Mrs. J. K. Ralston and others. Mrs. Ralston was an attesting witness. *Held,* that the words designating the personnel of the committee were mandatory, as expressive of testatrix's manifest intent. *In re Stinson's Estate, Appeal of Sower et al.* (Pa. 1911) 81 Atl. 207.

Difficulty arises in determining whether words are used in a precatory sense, denoting merely desire or recommendation, or whether they manifest a mandatory and imperative intent. The general rule in Pennsylvania has been that the expression of a desire or a wish of the testator as to a specific disposition of his property, if standing alone, constitutes a valid devise or bequest, but when such an expression has been used after an absolute disposition of his property it is not controlling and can not defeat the prior estate. *Hopkins* v. *Glunt,* 111 Pa. St. 287, 2 Atl. 183; *Burt* v. *Herron,* 66 Pa. 400; *Pennock's Estate,* 20 Pa. St. 268, 59 Am. Dec. 718. It will be noticed that the gift was given absolutely and without reservation for the object and